



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (the 2017 Rules) and section 51 of the Private Housing (Tenancies)(Scotland) Act 2016 (the 2016 Act)

Chamber Ref: FTS/HPC/EV/24/1608

Re: Property at 4 Bruce Gardens, Dalkeith, EH22 2LD (“the Property”)

Parties:

Mrs Jane Gould, 4 Broughton Market, Edinburgh, EH3 6NU (“the Applicant”)

Mr Steven Hayes, 4 Bruce Gardens, Dalkeith, EH22 2LD (“the Respondent”)

Tribunal Members:

Ms. Susanne Tanner KC (Legal Member)

Mrs Mary Lyden (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) was satisfied that the following grounds were established by the Applicant:

- (i) Ground 12 in Schedule 3, part 3 to the 2016 Act, in that on the day the tribunal considered the application for an eviction on its merits the Respondent was in rent arrears greater than one month’s rent and had been in arrears of rent for a continuous period of more than three consecutive months up to and including that day; that rent arrears**

were not wholly or partly a consequence of a delay or failure in payment of a relevant benefit; and that it was reasonable to make an order for eviction; and

- (ii) Ground 12A in Schedule 3, Part 3 to the 2016 Act in that: the Respondent has accrued rent arrears under the tenancy in respect of one or more periods; the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months' rent under the tenancy when notice to leave was given to the tenant on this ground in accordance with section 52(3) of the 2016 Act, and that it was reasonable to make an order for eviction; and

made an order for eviction in terms of Section 51 of the 2016 Act.

The decision of the tribunal was unanimous.

Statement of Reasons

Procedural background

1. The Applicant made an Application to the tribunal in terms of Rule 109 of the 2017 Rules and section 51 of the Private Housing (Tenancies)(Scotland) Act 2016 (the 2016 Act), seeking the Respondent's eviction from the Property on Grounds 12 and 12 A of Schedule 3.
2. Supporting documents were lodged with the Application including:
 - a. A Private Residential Tenancy agreement;
 - b. A Notice to leave by dated 6 March 2024;
 - c. A What's App screen shot dated 6 March 2024, apparently sending a Notice to Leave dated 6 March 2024; and a certificated of delivery from Royal Mail dated 11 March 2024;
 - d. A section 11 homelessness notice sent to the local authority; and
 - e. A rent statement to 12 February 2024.
3. The joint registered proprietor of the Property, Mr Nicholas Gould, gave his consent to the Application being made.
4. The Application was accepted for determination and a Case Management Discussion (CMD) was fixed for 26 September 2024 at 1400h by teleconference.

5. The Application and notification of the CMD was served on the Respondent by Sheriff Officers on 22 August 2024. Both parties were told that they were required to attend the CMD. The Respondent was asked to submit any written representations in response to the Application by 11 September 2024. Both parties were told that the tribunal can do anything at a CMD which it can do at a hearing including making an order for eviction.
6. The Respondent did not submit any written representations or make any contact with the tribunal.

Case Management Discussion: 26 September 2024 at 1400h by teleconference (in absence of the Respondent)

7. The Applicant Mrs Gould attended. She was joined by her husband, Mr Gould, the co-proprietor of the Property. She confirmed that she wished him to act as a supporter in terms. I explained the purpose of a supporter in the tribunal's Rules and both she and Mr Gould confirmed that they understood.
8. The Respondent did not attend. The tribunal was satisfied that the requirements of rule 24(1) regarding the giving of notice of a hearing had been duly complied with, and proceeded with the Application upon the representations of the party present and all the material before it.
9. The Applicant asked the tribunal to make an eviction order in terms of Grounds 12 and 12A of Schedule 3 to the 2016 Act.
10. In relation to service of the Notice to Leave, Mrs Gould accepted that the mail service was late in terms of the notice period for making the Application. She said that it was bought as next day delivery but was not delivered until 11th March 2024.
11. Mrs Gould wishes to rely on service by What's App of the Notice to Leave on 6 March 2024. The tribunal noted that the What's App screenshot relied upon is dated Wednesday 6 March and bears to have been sent to "Steven Hayes". There are no messages shown before or after that to indicate that it is the normal method of communication with the Respondent. Mrs Gould explained that that message was sent from her husband Nick to the Respondent. She said that text and What's App had become established as the normal method of communication with the Respondent because the Respondent had stopped replying to emails and said that he did not agree to emails being sent to him. She said that he did reply intermittently to text and What's App messages. She said that they wanted to send a copy of the document prior to sending it in the post. They sent him a text message to say that the Notice to Leave would be

sent. This was part of a longer conversation which followed on service of an earlier Notice to Leave (which is not relied on). The What's App message which has been lodged was then sent. Mrs Gould said that the two green ticks meant that the message has been delivered to the Respondent.

12. The tribunal asked Mrs Gould whether the messages prior to or after that 6 March 2024 message were available and could be lodged with the tribunal. Mrs Gould discussed matters with her supporter and further screenshots of What's App messages were submitted with the consent of the tribunal which pre and post dated the message submitting the Notice to Leave. They included messages which bore to be from the Respondent, in which he made references both to waiting in the property until it went to court and then responding to a message from Mr Gould which asked if he needed to go to the tribunal, in which he said if need be, until I get somewhere, it will just cost more.
13. In relation to Ground 12, the Applicant submitted an updated rent schedule with the consent of the tribunal which shows the arrears at the date of service of the Notice to Leave and to date. She said that the current arrears are £9560.00 and rent is £625.00 pcm. No payments have been made since February 2024. She said that the Respondent told them that that he was going to make no payments after service of the Notice to Leave.
14. In relation to Ground 12A, rent arrears at the date of service of the Notice to Leave, arrears were £5810.00 as at 1 March 2024.
15. In relation to reasonableness for both grounds:
 - a. the Applicant relied on the high level of rent arrears which are currently £9560.00. She said that the Respondent has been in the Property since August 2018. He has been in arrears from the third or fourth month he has been in the Property. She served a Notice to Leave in 2019 but an agreement was reached with schedules to try and pay back the arrears. The Applicant said that they did this several times over a four year period. The Respondent then stopped communicating with them.
 - b. The Applicant said that they understand that he lives in the Property on his own but may have a child staying at weekends of whom he has access arrangements.
 - c. She said that he works as a scaffolder. He previously told them, around 18 months ago, that he had some kind of accident and was off work for a few months and told them he was back and able to pay again. He also told them that he would get some compensation but that never happened

to their knowledge. She said that they offered him various payment arrangements to pay £200.00 per week, but he did not keep to the terms of the agreements. From roundabout February 2022, there were weekly payments coming in. The rent has remained static at £625.00 since August 2018.

- d. She said that at the time the tenancy was offered, they got an employer reference at the time and checked his ID and he was a friend of the previous tenant.
- e. She does not know if he is hoping to be re-housed by the local authority because it is impossible to speak to him.
- f. She said that he has changed the locks. The landlord gas safety check will be due soon but they cannot get in.
- g. She believes that he has engaged with the local authority. He said that he was speaking to Shelter so she presumed that he was looking at his options.
- h. At no time to their knowledge has he paid his rent through benefits or universal credit.

16. The tribunal adjourned to deliberate, including consideration of the additional evidence lodged during the CMD in relation to (1) service of the Notice to Leave and (2) rent arrears.

Findings in Fact

1. The Applicant is the joint registered proprietor of the Property.
2. The Applicant and Respondent entered into a Private Residential Tenancy agreement in respect of the Property which began on 28 August 2018.
3. The rent due under the tenancy agreement is £625.00 per calendar month from the start of the tenancy to date.
4. The Respondent has accrued rent arrears under the tenancy in respect of one or more periods.

5. The rent arrears as at 6 March 2024 were £5810.00.
6. The accepted methods of communication between the parties included text messages and What's App messaging from the Applicant's husband, the co-proprietor of the Property and the Respondent.
7. A Notice to Leave was served in terms of Grounds 1, 12 and 12A of Schedule 3 of the 2016 Act on 6 March 2024 by What's App message.
8. No payments of rent have been made by the Respondent since service of the Notice to Leave.
9. The Respondent has not provided any proposals for payment of the arrears and he is not meeting rent payments as they fall due.
10. The rent arrears as at 26 September 2024 were £9560.00.
11. The rent arrears are not wholly or partly a consequence of a delay or failure in payment of a relevant benefit.
12. The Respondent has not opposed the Application for eviction.
13. The Respondent has a sole tenancy and lives in the Property alone.

Findings in Fact and Law

14. As at 26 September 2024, the Respondent was in rent arrears greater than one month's rent and had been in arrears of rent for a continuous period of more than three consecutive months up to and including that day.
15. The cumulative amount of the Respondent's rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months' rent under the tenancy when notice to leave was given to the tenant on ground 12A in accordance with section 52(3) of the 2016 Act on 6 March 2024.

Discussion

16. The tribunal was satisfied after considering submissions from the Applicant that the requirements of both Grounds 12 and 12A were met,

including a decision that it was reasonable to make an eviction order in the circumstances.

17. In relation to service of the Notice to Leave, the tribunal was satisfied by that that What's App messages which were lodged were between the Applicant's husband, the co-proprietor of the Property and the Respondent in connection with the tenancy. The tribunal was satisfied that it had become one of the accepted methods of communication between the parties in relation to the tenancy. The tribunal was satisfied that the message was delivered because it accepted the evidence that the two green ticks confirmed that. In relation to whether the message was read by the Respondent, the tribunal drew an inference from the What's App messages by the Respondent post-dating the service of the Notice to Leave that the Respondent had received the Notice to Leave, in particular given his references to staying in the Property until tribunal proceedings were raised.

18. In relation to reasonableness, the tribunal accepted the Applicant's submissions that it was reasonable to make an eviction order. The Respondent has not opposed the Application for eviction or lodged any submissions. He did not attend the Case Management Discussion despite notification. The tribunal has not been made aware by the Respondent of any vulnerabilities, or issues in respect of relevant benefits that may have led to all, or part, of the rent arrears. The Applicant is suffering the adverse effects of the substantial rent arrears and the Respondent's continued failure to meet rent payments falling due. In all the circumstances the tribunal decided that it was reasonable to make an eviction order.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

S.Tanner KC

Legal Member/Chair

Date: 26 September 2024

